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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/950,016	09/10/2001	Janet A. Warrington	03848-00093	9580
28315	7590	10/14/2004		
BANNER & WITCOFF LTD., ATTORNEYS FOR AFFYMETRIX 1001 G STREET, N.W. ELEVENTH FLOOR WASHINGTON, DC 20001-4597			EXAMINER JOHANNSEN, DIANA B	
			ART UNIT	PAPER NUMBER
			1634	

DATE MAILED: 10/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/950,016	Applicant(s) WARRINGTON ET AL.	
	Examiner Diana B. Johannsen	Art Unit 1634	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims:

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

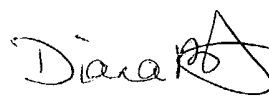
Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1,2,7-14 and 18-25.

Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: Interview Summary enclosed.



Diana B. Johannsen
Primary Examiner
October 7, 2004

Continuation of 2. NOTE: Applicant's amendment of independent claims 1-2, 7, and 22 raises new issues under 35 USC 103 and 35 USC 112, first paragraph that would require further search and consideration, as the recitation of numerous particular genes (not previously recited in the claims) necessitates a new search of each of these genes and consideration as to whether the claims as amended are or are not obvious and enabled. Further, the amendment of the independent claims to recite GenBank accession numbers raises new issues under 35 USC 112, first and second paragraphs. Particularly, as the sequence information associated with such accession numbers is periodically modified and updated, such accession numbers are indefinite. Additionally, such accession numbers do not convey to one of skill in the art the identity of the sequence actually possessed by applicants at the time the invention was made, the knowledge of which would be required to practice the invention as claimed. The use of the language "corresponds to" in claims 1-2, 7 and 22 also raises issues under 35 USC 112, second paragraph, as it is not clear what types of relationships between a nucleic acid, marker, or group of markers would be encompassed by this terminology .

Continuation of 5. does NOT place the application in condition for allowance because: for the reasons of record in view of the non-entry of the After Final amendment.